

AMENDED IN ASSEMBLY MAY 27, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1211

Introduced by Assembly Member Torrico

February 27, 2009

~~An act to amend Section 272 of the Penal Code, relating to crimes.~~
An act to add Section 3005 to the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 1211, as amended, Torrico. ~~Contributing to delinquency of minors; criminal street gang participant. Parole: conditions.~~

Existing law authorizes the imposition of various conditions on persons released from prison on parole. Under existing law, one of the conditions imposed upon a prisoner released on parole is that the prisoner agree to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause. If the prisoner does not agree to that condition of release, he or she loses worktime credits earned and may not be released from prison until he or she agrees to that condition or the entire term of imprisonment has expired, as specified.

This bill would, instead, require that any person being released on parole who was not committed to prison for a registerable sex offense, a serious felony, a violent felony, or any felony that directly or indirectly involved violence or the threat of violence, and who does not have a prior conviction for a serious or violent felony, be released on parole with only one condition. This bill would provide that the one condition

imposed on an eligible parolee would be that he or she agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause. This bill would provide that any eligible inmate who does not agree in writing to that condition shall lose worktime credit earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 on a day-for-day basis and shall not be released until he or she either agrees in writing to that condition or has no remaining worktime credit, whichever occurs first. This bill would also provide that a parolee's refusal to submit to a search or seizure while on parole is not grounds to revoke his or her parole.

~~Under existing law, every person who commits an act or omits the performance of any duty which causes a minor to become a dependent of the court, or any person who induces a minor to fail to conform to a lawful order, is guilty of a misdemeanor.~~

~~This bill would additionally provide that any person who omits the performance of any duty which causes a minor to become an active participant in a criminal street gang, as specified, is guilty of a misdemeanor. Because the bill would create a new crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3005 is added to the Penal Code, to read:
2 3005. (a) Notwithstanding any other provision of law, any
3 inmate released on parole on or after June 1, 2009, who is not
4 required to register as a sex offender pursuant to Chapter 5.5
5 (commencing with Section 290) of Title 9 of Part 1, who was not
6 committed to prison for a serious felony, as defined in Section
7 1192.7, a violent felony, as defined in Section 667.5, or any other
8 felony that directly or indirectly involved violence, and who does
9 not have a prior conviction for a serious or violent felony, shall
10 be released on parole with only one condition; that he or she agree

1 *in writing to be subject to search or seizure by a parole officer or*
2 *other peace officer at any time of the day or night, with or without*
3 *a search warrant and with or without cause.*

4 *(b) Any inmate subject to release pursuant to subdivision (a)*
5 *who does not agree in writing to that condition shall lose worktime*
6 *credit earned pursuant to Article 2.5 (commencing with Section*
7 *2930) of Chapter 7 on a day-for-day basis and shall not be released*
8 *until he or she either agrees in writing to that condition or has no*
9 *remaining worktime credit, whichever occurs first.*

10 *(c) The refusal of a parolee released pursuant to subdivision*
11 *(a) to submit to an authorized search or seizure shall not be the*
12 *basis for revocation of his or her parole.*

13 *(d) Nothing in this section prohibits or limits any authority to*
14 *prosecute and punish a person released pursuant to subdivision*
15 *(a) for the commission of a new crime while released on parole.*

16 **SECTION 1.** ~~Section 272 of the Penal Code is amended to~~
17 ~~read:~~

18 ~~272. (a) (1) Every person who commits any act or omits the~~
19 ~~performance of any duty, which act or omission causes or tends~~
20 ~~to cause or encourage any person under the age of 18 years to come~~
21 ~~within the provisions of Section 300, 601, or 602 of the Welfare~~
22 ~~and Institutions Code or which act or omission contributes thereto,~~
23 ~~or any person who, by any act or omission, or by threats,~~
24 ~~commands, or persuasion, induces or endeavors to induce any~~
25 ~~person under the age of 18 years or any ward or dependent child~~
26 ~~of the juvenile court to fail or refuse to conform to a lawful order~~
27 ~~of the juvenile court, or to do or to perform any act or to follow~~
28 ~~any course of conduct or to so live as would cause or manifestly~~
29 ~~tend to cause that person to become or to remain a person within~~
30 ~~the provisions of Section 300, 601, or 602 of the Welfare and~~
31 ~~Institutions Code, is guilty of a misdemeanor and upon conviction~~
32 ~~thereof shall be punished by a fine not exceeding two thousand~~
33 ~~five hundred dollars (\$2,500), or by imprisonment in the county~~
34 ~~jail for not more than one year, or by both fine and imprisonment~~
35 ~~in a county jail, or may be released on probation for a period not~~
36 ~~exceeding five years.~~

37 ~~(2) For purposes of this subdivision, a parent or legal guardian~~
38 ~~to any person under the age of 18 years shall have the duty to~~
39 ~~exercise reasonable care, supervision, protection, and control over~~
40 ~~their minor child.~~

~~(b) (1) An adult stranger who is 21 years of age or older, who knowingly contacts or communicates with a minor who is under 14 years of age, who knew or reasonably should have known that the minor is under 14 years of age, for the purpose of persuading and luring, or transporting, or attempting to persuade and lure, or transport, that minor away from the minor's home or from any location known by the minor's parent, legal guardian, or custodian, to be a place where the minor is located, for any purpose, without the express consent of the minor's parent or legal guardian, and with the intent to avoid the consent of the minor's parent or legal guardian, is guilty of an infraction or a misdemeanor, subject to subdivision (d) of Section 17.~~

~~(2) This subdivision shall not apply in an emergency situation.~~

~~(3) As used in this subdivision, the following terms are defined to mean:~~

~~(A) "Emergency situation" means a situation where the minor is threatened with imminent bodily harm, emotional harm, or psychological harm.~~

~~(B) "Contact" or "communication" includes, but is not limited to, the use of a telephone or the Internet, as defined in Section 17538 of the Business and Professions Code.~~

~~(C) "Stranger" means a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization, as defined in subdivision (e) of Section 6600 of the Welfare and Institutions Code.~~

~~(D) "Express consent" means oral or written permission that is positive, direct, and unequivocal, requiring no inference or implication to supply its meaning.~~

~~(4) This section shall not be interpreted to criminalize acts of persons contacting minors within the scope and course of their employment, or status as a volunteer of a recognized civic or charitable organization.~~

~~(5) This section is intended to protect minors and to help parents and legal guardians exercise reasonable care, supervision, protection, and control over minor children.~~

~~(e) (1) Every person who omits the performance of any duty, which omission causes any person under 18 years of age to become an active participant in a criminal street gang, as specified in subdivision (a) of Section 186.22, is guilty of a misdemeanor.~~

1 Upon conviction thereof, he or she shall be punished by a fine not
2 exceeding two thousand five hundred dollars (\$2,500), or by
3 imprisonment in the county jail for not more than one year, or by
4 both fine and imprisonment in a county jail.

5 (2) For purposes of this subdivision, a parent or legal guardian
6 to any person under the age of 18 years shall have the duty to
7 exercise reasonable care, supervision, protection, and control over
8 their minor child.

9 (3) The parental diversion provisions of Chapter 2.9B
10 (commencing with Section 1001.70) of Title 6 of Part 2 shall apply
11 to this subdivision.

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.